

Before the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

RECEIVED

NOV 22 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

)
)
)
)
)
)

MM Docket No. 87-268

To: The Commission

DOCKET FILE COPY ORIGINAL

**RGV EDUCATIONAL BROADCASTING, INC. COMMENTS
ON THE SIXTH NOTICE OF PROPOSED RULEMAKING**

RGV Educational Broadcasting, Inc. ("RGV"), licensee of KMBH-TV, Ch. 60, Harlingen, Texas, through its undersigned counsel, hereby respectfully submits its comments with respect to the ATS Sixth Notice ("the Notice"), and in support hereof respectfully shows as follows:

I. Description of RGV.

RGV (Rio Grande Valley) Educational Broadcasting, Inc. is a non-commercial educational ("NCE") broadcast station serving the Rio Grande Valley area of Texas. RGV carries some PBS programming and produces both locally oriented programming and programming that has been aired on other NCE stations.

RGV is licensed to operate on Ch. 60 in Harlingen, Texas, a channel that is not reserved for NCE use. RGV operates close to the Mexican border and its operations are affected by Mexican border area allotments.

RGV owns its own broadcast tower that is over one thousand feet in height and is in a prime location. RGV wishes to be able to continue to serve its viewing audience from this site for the indefinite future.

The Notice proposes to assign to RGV adjacent Ch. 61 for ATV use.

II. RGV Generally Supports the Broadcaster's Comments.

RGV generally supports the Broadcasters' Comments with respect to the Notice.

A. Assignment of an Adjacent ATV Channel.

The Commission's proposal to assign to RGV adjacent Channel 61 generally is consistent with the Broadcasters' Comments in support of assigning adjacent channels. See Broadcasters' Comments, Section III., A., 4. The Broadcasters' Coalition believes that the assignment of adjacent channels will facilitate co-location of NTSC and ATV facilities, perhaps even allowing the use of one antenna for both signals. Such co-location is of prime importance to RGV. As an NCE station that owns its own tower, it is imperative that the Commission's plan permit RGV to continue to conduct all of its operations at its existing licensed site.

The Broadcasters' Coalition also believes that assignment of an adjacent channel to exiting licensees will best replicate existing coverage areas and will give broadcasters maximum control over potential interference problems. RGV has no reason to question those assumptions. However, RGV must note

that the operation of NTSC and ATV first adjacent channels from a co-located site, like many other aspects of ATV, remains largely experimental in nature. RGV reserves the right to request re-assignment in the event that further testing undermines the assumptions underlying the Broadcasters' Comments.

B. The Importance of Free Over-the-Air Television.

RGV wishes to underscore the Broadcasters' data showing the continued importance of free over-the-air television to households with moderate to low incomes and to children. The Broadcasters show that, "Less than 50% of television households with incomes below \$20,000 subscribe to cable....35% of children ages 12-17 and 37% of children ages 2-11 do not have access to cable programming." Broadcasters' Comments, Section III.B.1.

RGV serves a Rio Grande Valley audience that historically has ranked below U.S. averages in household income, according to U.S. Census figures. Although the area economy is improving, RGV believes that the Commission cannot overlook the importance of free over-the-air television to RGV's audience and should proceed with extreme caution in order to preserve and extend the public service provided by RGV.

C. Concerns with respect to the Core Channel Concept.

The Notice proposes to re-locate all broadcast stations into a "core spectrum" of channels 7-51 and to auction off channels 60-69. The Notice states that the procedures for "recovery" and auctioning of channels 60-69 would be the subject of a further rulemaking. Existing licenses of channels 60-69,

such as RGV, would have to re-locate to the core spectrum. RGV, like the Broadcasters' Coalition, cannot support the Commission's proposal for two reasons.

1. The Commission's core channel proposal has no rational basis, according to the Coalition.

It is axiomatic that an administrative agency must have a rational basis for its actions that can be supported by the record, whether proceeding by adjudication or rulemaking. The core channel concept lacks any rational basis or record support according to the Broadcasters' Coalition, "There is no evidence that channels 7-51 comprise the most appropriate band for DTV." Broadcasters' Comments, Summary. According the Broadcasters' Comments, the Commission's proposal to use only channels 7-51 for ATV has "no technical justification".

RGV potentially could agree with the Commission's proposal to require RGV to relocate to a "core channel" if the Commission could demonstrate that RGV would be able to provide better service to the public in the band of channels 7-51 than RGV could provide on channel 60 or 61. But RGV cannot support the Commission's re-location proposal when the Commission has failed to produce any technical evidence that this is in fact the case, according to the Broadcasters' Coalition. RGV, as a small NCE station operator, must rely upon the technical expertise of the Coalition and must support their Comments in this regard.

2. RGV particularly is concerned about the feasibility of the core channel concept in the Mexican border area.

The Commission proposes that RGV be relocated to the core channel band of Channels 7-51 and that channels 60-69 be auctioned. But the Commission has produced a channel plan that continues to use all of the existing channels and proposes that RGV commence DTV operations on Channel 61. The channel plan produced by the Commission fails to show that RGV will be able to relocate to one of the core channels, 7-51, especially as RGV operates in the Mexican border area.

RGV cannot support the Commission's proposal absent a showing by the Commission that RGV will be able to re-locate to one of the core channels 7-51 in the Mexican border area. It is incumbent upon the Commission to demonstrate that RGV can continue to serve its audience from its existing tower on one of the core channels before the FCC seriously can expect RGV to support the Commission's core channel concept. RGV is particularly wary of the potentially serious problems it may face, given the complexities of channel coordination in the Mexican border area.

3. RGV is not adequately reassured by the Commission's vague statements regarding compensation.

The Notice states that new licensees who buy channels 60-69 in an auction "may" be required to compensate existing licensees for the cost of re-location to channels 7-51:

"We also may consider requiring the new licensees to compensate broadcasters for the cost of relocating to DTV channels in the core spectrum area." Notice, para. 26.

The Broadcasters' Coalition appears to read too much into this vague statement:

"The Notice anticipates that compensation would be provided to broadcasters forced to move from channels 60-69 and, later 52-59 and 2-6."

Broadcasters Comments, Section II.B.2.

RGV cannot support the Commission's proposal to require RGV to begin ATV operations on Ch. 61 and later change to a core channel (7-51) based upon such vague statements regarding compensation for the costs of such channel change. As noted, although RGV operates on a non-reserved channel, RGV is an NCE station that can ill afford to construct ATV facilities twice.

RGV is a forward looking station that seeks to use ATV to provide a range of services to its viewing audience. RGV believes that its viewing audiences can benefit from a number of potential services, including bi-lingual and multi-lingual broadcasting, supplemental data and textual information, and programs that expand upon RGV's existing links with local educators. RGV does not wish to delay the implementation of ATV by any means.

However, precisely because RGV hopes to rapidly benefit from ATV, RGV is opposed to proposals that would require RGV to disrupt operations in order to re-locate its operations to a

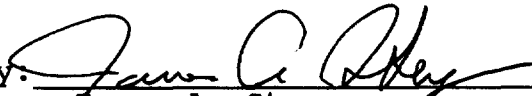
different channel and utilize scarce resources that should be devoted to programs that benefit the community. If channels 60-61 are going to be re-captured and auctioned, RGV should be compensated for any re-location costs so that RGV's service to the public will not be adversely affected.


Conclusion

Wherefore, RGV joins in the Broadcasters' Comments. Like the Broadcasters, RGV supports the Commission's proposals to begin the implementation of ATV, but with such reservations and concerns as are noted above.

Respectfully submitted,

RGV EDUCATIONAL BROADCASTING, INC.

By: 
James A. Stenger
ROSS & HARDIES
888 16th Street, N.W.
Fourth Floor
Washington, D.C. 20006
(202) 835-7449
Their Counsel

By: 
James B. Hatfield
HATFIELD & DAWSON
4226 6th Avenue, N.W.
Seattle, Washington 98107
(206) 783-9151
Their Consulting Engineer

Dated: Nov. 22, 1996

CERTIFICATE OF SERVICE

I, Magdalene E. Copp, a secretary of the law office of Ross & Hardies, do hereby certify that I have this 22nd day of November, 1996, served by first-class mail, postage pre-paid, a copy of the foregoing "Comments on the Sixth Notice of Proposed Rulemaking" to:

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

The Honorable Rachelle Chong
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Richard M. Smith, Chief *
Office of Engineering & Technology
Federal Communications Commission
2000 M Street, N.W., Room 480
Washington, D.C. 20554

Saul Shapiro, Assistant Chief *
Office of Engineering & Technology
Federal Communications Commission
2000 M Street, N.W., Room 480
Washington, D.C. 20554

Jonathan D. Blake, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

Counsel to MSTV

By: Magdalene E. Copp
Magdalene E. Copp

* Hand delivered.